APPENDIX C

40 U.S.C. § 258a. Same; lands, easements, or rights-of-way for public use; taking of possession and title in advance of final judgment; authority; procedure

In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the

persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power the fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. Feb. 26, 1931, c. 307, § 1, Stat. 1421.

43 U.S.C. § 166. Time for settlers to file application and to perfect entry; marriage of entrywoman; preferential right of entry.

Any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his

homestead application and perfect his original entry in the United States Land Office as allowed on May 14, 1880, to settlers under the then existing preemption laws to put their claims on record, and his right shall relate back to the date of settlement, the same as if he settled under such preemption laws.

Where an unmarried woman who has heretofore settled, or may hereafter settle, upon a tract of public land, improved, established, and maintained a bona-fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall thereafter marry, before making entry of said land, or before making application to enter said land, she shall not on account of her marriage forfeit her right to make entry and receive patent for the land: *Provided,* That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: *Provided further,* That the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law: *Provided further,* That any settler upon lands designated by the Secretary of the Interior as subject to the provisions of subsections (a)-(e), of section 218 of this title and subsections (a)-(e), of section 219 of this title, shall be entitled to the preference right of entry accorded by this section, provided he shall have plainly marked the exterior boundaries of the lands claimed as his homestead: *And provided further,* That after the designation by the Secretary of the Interior of public lands for entry under the nonresidence provisions of the Enlarged Homestead Acts, sections 218 and 219 of this title, any person who shall have plainly marked the exterior boundaries of the lands claimed under said provision of law and made valuable improvements thereon shall have a preference right to enter the lands so claimed and improved at any time within three months after the date on

which such lands become subject to entry; but such right shall forfeit unless the settler or claimant under the provisions of the Enlarged Homestead Acts shall annually cultivate and improve the lands in the form and manner and to the extent therein required following date of initiation of his claim hereunder. May 14, 1880, c. 89, § 3, 21 Stat. 141; June 6, 1900 c. 821, 31 Stat. 683; Aug. 9, 1912, c. 280, 37 Stat. 267.

28 U.S.C. § 1358. Eminent Domain:

"The district courts shall have original jurisdiction to condemn real estate for the use of United States or its departments or agencies."

California Civil Code

§ **1014.** Alluvion.

"Where, from natural causes, land forms by imperceptible degrees, upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank."

§ **830.** Boundaries by water.

"Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tidewater, takes to ordinary high-water mark; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

UNITED STATES OF AMERICA,
Appellee,
vs.
243.25 Acres of Land, More or Less in the County of Imperial, State of California, etc., et al.,
Appellants.

Certificate of Service

I hereby certify that on this 24th day of May, 1974, three copies of the Petitioners' Brief for Writ of Certiorari were mailed, postage prepaid, to each of the following named persons:

Kent Frizzell, Assistant Attorney General
Eva R. Datz, Attorney
Land and Natural Resources Division
Department of Justice
Washington, D.C. 20530

Evelle J. Younger, Attorney General
for the State of California
Peter Graber, Assistant Atty. General
6000 State Building,
San Francisco, CA 94102

Harry D. Stewart, United States Attorney
Ernestine Tolin, Special Assistant to U.S. Attorney
1100 United States Courthouse
312 North Spring Street
Los Angeles, CA 90012

Solicitor General
Department of Justice
Washington, D.C. 20530

I further certify that all parties required to be served have been served.

ROSCOE D. KEAGY
Attorney for Petitioner